

Naresh Pandey Vs. State of U.P.

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Court : Allahabad

Decided On : Jan-28-2003

Reported in : 2003(90)ECC92

Judge : Onkareshwar Bhatt, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 22, 50 and 57; Code of Criminal Procedure (CrPC) - Sections 464

Appeal No. : Criminal Appeal No. 151 of 2000

Appellant : Naresh Pandey

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : K.S. Tewari, ;Apul Misra and ;P.N. Misra, Advs.

Disposition : Appeal allowed

Judgement :

Onkareshwar Bhatt, J.

1. Appellant, Naresh Pandey, has preferred this appeal against judgment and order dated 15.12.1999 passed by the then II Addl. Sessions Judge, Varanasi. By the impugned order the appellant has been convicted under Section 22 of the

Narcotic Drugs and Psychotropic Substances Act, 1985, hereinafter referred to as the Act, and sentenced to ten years rigorous imprisonment and to a fine of Rupees one lac and in default of payment of fine two years rigorous imprisonment has been ordered.

2. Sri P.N. Misra, learned Senior counsel appearing for the appellant and the learned A.G.A. appearing for the State have been heard.

3. On 1.3.1996 P.W. 2 Sub-Inspector Pradeep Kumar Verma alongwith P.W. 1 Constable Baamdeo Tiwari and two other constables were engaged in law and order duty in the area of outpost Dashashomedh, Varanasi. He received information that the appellant was having contraband charas for sale on Man Mandir Ghat. The appellant was arrested at 4.45 P.M. by the Sub Inspector after complying with the provisions of Section 50 of the Act and on his search ten grams of charas of brown colour wrapped in a polythene was recovered. The charas was kept in a match-box and was sealed. First information report was lodged at 6.30 P.M. at police station, Dashashomedh, Varanasi. The case was registered and investigated and charge-sheet was laid against the appellant. On analysis the seized article was found as charas by the Chemical Examiner.

4. The accused appellant denied the prosecution case and alleged to have been falsely implicated.

5. For proving arrest of the appellant, his search and seizure of charas from his possession, only two witnesses, namely, Constable Baamdeo Tiwari and sub-Inspector Pradeep Kumar Verma have been examined by the prosecution. In the recovery memo it is mentioned that no public witness was willing to associate with them. It is well settled that the testimony of a witness has not to be doubted or discarded merely on the ground that he happens to be a police official. Therefore, the witnesses being police personnel are not liable to be disbelieved on that ground alone.

6. It has been contended that charge framed in the case is defective inasmuch as it mentions that 100 grams charas was recovered from possession of the appellant. The trial court has considered this aspect. Moreover, according to

Section 464, Cr. P.C. no finding, sentence or order by a court of competent jurisdiction shall be deemed invalid on the ground of any error, omission or irregularity in the charge.....unless, in the opinion of the Court of appeal.....failure of justice has in fact been occasioned thereby. The mention of 100 Grams of charas in the charge, whereas in fact recovery of ten grams of charas only is alleged to have been made, in fact, does not occasion failure of justice because mention of 100 grams in the charge appears to be a typing error.

7. It has come in evidence that the seized charas was kept in a match box over which tool was written in English, wrapped in a paper and sample seal was prepared. Sub-Inspector Pradeep Kumar Verma has stated that the seized article was brought by him to the police station. P.W.4 Head Constable Babu Ram Yadav cannot say when this article was sent for chemical analysis. The report of Chemical Examiner shows that he has received the articles on 21.3.1996 in a sealed condition alongwith sample seal. In the report of the Chemical Examiner there is no mention of match-box. For the reasons best known to the prosecution the seized article was not identified by either P.W.1 Baamdeo Tiwari or P.W.2 Pradeep Kumar Verma, Sub Inspector, who has been examined as witnesses of fact. Non-production of the seized article before the court at the time of the statement of the witnesses of fact render their testimony unworthy of reliance because it cannot be said that the article which was alleged to have been recovered from possession of the appellant was the same which was sent for analysis. The evidence on record also does not show that the entire contraband alleged to have been seized was sent for analysis or only part of it was sent.

8. It has come in the evidence of Pradeep Kumar Verma that the weight of the contraband charas was noted by him on guess. In the report of the Chemical Examiner weight of charas is not mentioned. It may be mentioned that five grams of charas is small quantity for which lesser punishment is provided. The evidence on record does not clearly point out as to what was the exact weight of the contraband alleged to have been seized from possession of the appellant.

9. From the evidence on record one more aspect is noteworthy. Section 57 of the Act, which deals with making of full report of all particulars of the arrest and

seizure to immediate official superior, has not been complied with. The provisions of Section 57 of the Act requires that whenever any person makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior. The evidence on record is silent about the compliance of this provision. Failure to comply with the said provision will have a bearing on appreciation of evidence recorded, arrest of seizure as well as on the merits of the case as has been held in the case of State of Punjab v. Balbir Singh, 1994 (3) All Cri C 351 : (AIR 1994 SC 1872). On the basis of the aforesaid evidence recovery of the alleged contraband becomes suspect and it will not be safe to convict the accused-appellant.

10. In the result the appeal is liable to succeed.

11. The appeal is allowed. The judgment and order of the trial Court convicting the appellant under Section 22 of the Act are set aside. The appellant is in jail. He shall be released forthwith. If not required in any other criminal

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